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The Paul Revere Life Insurance Company and Unum Group

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WEYMAN H. COX II, Plaintiff, v. PAUL REVERE LIFE INSURANCE COMPANY, UNUMPROVIDENT CORPORATION, and DOES 1 through 10, Inclusive, Defendants.	Case No. 08 CV 1353 LAB WMc **DEFENDANTS' ANSWER TO COMPLAINT**

Defendants The Paul Revere Life Insurance Company ("Paul Revere"), erroneously sued as "Paul Revere Life Insurance Company," and Unum Group ("Unum"), formerly known as UnumProvident Corporation, [collectively "Answering Defendants"] answer the Complaint herein by admitting, denying, and alleging as follows:

ANSWERS TO GENERAL ALLEGATIONS

1. Answering paragraph 1, Answering Defendants admit the allegations thereof.

2. Answering paragraph 2, Answering Defendants admit and allege that Unum Group, formerly known as UnumProvident Corporation, is a corporation organized under the laws of the State of Delaware with its principal place of business in Chattanooga, Tennessee. Except as expressly admitted and alleged, Answering Defendants deny the remaining allegations of said paragraphs.

3. Answering paragraph 3, Answering Defendants admit and allege that Paul Revere is a corporation, organized under the laws of the State of Massachusetts, with its principal place of business located in Worcester, Massachusetts, and that at all relevant times it has been properly licensed and authorized to engage in the business of insurance in the State of California and the County of San Diego.

4. Answering paragraph 4, Answering Defendants deny each and every allegation thereof.

5. Answering paragraphs 5 and 6, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraphs, and they deny said allegations on that basis.

6. Answering paragraph 7, Answering Defendants admit and allege that on and effective January 24, 1992, Paul Revere issued an individual policy of disability insurance, no. 01025485340, to Plaintiff, providing specified benefits for disability in accordance with the terms, limitations, and provisions thereof. Answering Defendants allege that the policy itself is the best evidence as to the contents thereof.

7. Answering paragraph 8, Answering Defendants deny each and every allegation thereof.

8. Answering paragraph 9, Answering Defendants admit and allege that on and effective January 24, 1992, Paul Revere issued an individual business overhead expense policy, no. 01025492650, to Plaintiff, providing specified business overhead expense benefits in accordance with the terms, limitations, and

provisions thereof. Answering Defendants allege that said policy is the best evidence as to the contents thereof.

9. Answering paragraph 10, Answering Defendants admit the allegations thereof.

10. Answering paragraph 11, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph, and they deny said allegations on that basis.

11. Answering paragraph 12, Answering Defendants admit and allege that Plaintiff submitted a claim to Paul Revere for benefits under his policies based on his contention that he became totally disabled on December 28, 2004 as a result of a snowmobile accident in November 1994, which caused a retinal detachment in his left eye, and later in his right eye. Answering Defendants admit further that Paul Revere made certain payments to Plaintiff under his policies. Except as expressly admitted, Answering Defendants deny the remaining allegations of said paragraph.

12. Answering paragraph 13, Answering Defendants admit that Plaintiff submitted a claim to Paul Revere for certain expenses allegedly incurred in his business, and that said claims were denied for good and sufficient reasons. Answering Defendants admit further that Plaintiff appealed the denial of said expenses and that the denial was upheld by Paul Revere. Except as expressly admitted and alleged, Answering Defendants deny the remaining allegations of said paragraph.

13. Answering paragraph 14, Answering Defendants admit and allege that Paul Revere wrote to Plaintiff on April 25, 2008 concerning his claim, and that said writing is the best evidence as to the contents thereof.

14. Answering paragraph 15, Answering Defendants deny each and every allegation thereof.

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ANSWERS TO ALLEGATIONS OF FIRST COUNT

15. Answering paragraph 16, Answering Defendants refer to and incorporate herein by this reference their Answers to paragraphs numbers 1 through 15 of the Complaint herein.

16. Answering paragraphs 17 through 21, inclusive, Answering Defendants deny each and every allegation thereof.

ANSWERS TO ALLEGATIONS OF SECOND COUNT

17. Answering paragraph 22, Answering Defendants refer to and incorporate herein by this reference their answers to the allegations of paragraphs numbers 1 through 15 of the Complaint herein.

18. Answering paragraphs 23 through 29, inclusive, Answering Defendants deny each and every allegation thereof.

FIRST AFFIRMATIVE DEFENSE

19. The Complaint, and each of its alleged causes of action, fails to state a claim upon which relief may be granted against Answering Defendants, or either of them.

SECOND AFFIRMATIVE DEFENSE

20. The Complaint, and each of its alleged causes of action, is barred by the applicable statutes of limitations and/or contractual limitations periods.

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THIRD AFFIRMATIVE DEFENSE

21. The Complaint, and each of its alleged causes of action, is barred by Plaintiff's failure to exhaust contractual and administrative remedies.

FOURTH AFFIRMATIVE DEFENSE

22. The Complaint, and each of its alleged causes of action, is barred by the doctrines of waiver, estoppel, unclean hands, and laches.

FIFTH AFFIRMATIVE DEFENSE

23. Answering Defendants allege on information and belief that after the occurrence of the alleged loss and damage to Plaintiff, Plaintiff herein failed and refused to mitigate his damages and by reason thereof, he is barred, in whole or in part, from recovery from Answering Defendants.

SIXTH AFFIRMATIVE DEFENSE

24. Answering Defendants allege on information and belief that the incident, injury or damage alleged in the Complaint occurred and was proximately caused by either the sole negligence or sole bad faith conduct of Plaintiff, which bars Plaintiff's recovery, or was contributed to by Plaintiff's negligence or bad faith conduct. Plaintiff's recovery, if any, should be reduced by an amount proportionate to the amount by which Plaintiff's negligence or bad faith conduct contributed to the happening of the alleged injuries.

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SEVENTH AFFIRMATIVE DEFENSE

25. Each and every act or statement done or made by Answering Defendants, their officers, employees, agents, or attorneys, with reference to Plaintiff, or Plaintiff's claim, was a good faith assertion of their rights and was privileged.

EIGHTH AFFIRMATIVE DEFENSE

26. Plaintiff's claims for extra-contractual damages are barred by the provisions of California Insurance Code, § 10111.

NINTH AFFIRMATIVE DEFENSE

27. Plaintiff's claim for attorneys' fees is barred by California Code of Civil Procedure § 1021.

TENTH AFFIRMATIVE DEFENSE

28. Plaintiff's claims for breach of contract and breach of the implied covenant of good faith and fair dealing are barred by his failure to pay premiums to maintain his policies in force.

ELEVENTH AFFIRMATIVE DEFENSE

29. Plaintiff's claim for punitive damages is barred by the Fourteenth Amendment substantive due process provision of the Constitution of the United

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States of America and/or the Article 1, § 7 substantive due process provision of the Constitution of the State of California.

TWELFTH AFFIRMATIVE DEFENSE

30. Plaintiff's claim for punitive damages is barred by the Fourteenth Amendment procedural due process provision of the Constitution of the United States of America and/or the Article 1, § 7 procedural due process provision of the Constitution of the State of California.

THIRTEENTH AFFIRMATIVE DEFENSE

31. Plaintiff's claim for punitive damages is barred by the Article 1, § 17 excessive fines provision of the Constitution of the State of California.

FOURTEENTH AFFIRMATIVE DEFENSE

32. Plaintiff's claim for punitive damages is barred by the Article 1, § 10 contracts clause of the Constitution of the United States of America and/or the Article 1, § 9 contracts clause of the Constitution of the State of California.

FIFTEENTH AFFIRMATIVE DEFENSE

33. Should Plaintiff produce clear and convincing evidence sufficient to satisfy the requirements for punitive damages under Civil Code § 3294 as to Answering Defendants, any punitive damages awarded must be reasonable in terms of the guideposts established by the United States Supreme Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996),

and refined in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003): (1) the degree of reprehensibility of defendants' conduct; (2) the actual harm inflicted; and (3) the civil or criminal penalties that could be imposed for comparable conduct.

WHEREFORE, Answering Defendants pray judgment:

1. That Plaintiff take nothing by reason of his Complaint;
2. For costs of suit incurred herein, including attorneys' fees; and
3. For such other and further relief as the Court may deem just and proper.

Dated: August 1, 2008

Burke, Williams & Sorensen, LLP
Stephen H. Galton
Keiko J. Kojima

By: */s/ Stephen H. Galton*
Stephen H. Galton
Attorneys for Defendants The Paul Revere Life Insurance Company and Unum Group

PROOF OF SERVICE

Cox v. Paul Revere Life Ins. Co., et al.

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. On August 1, 2008, I served a copy of the within document(s) entitled **DEFENDANTS' ANSWER TO COMPLAINT**

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☒ by electronic service of the document(s) through the Court's transmission facilities.

Michael B. Horrow
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on August 1, 2008, at Los Angeles, California.

Barbara W. Jeong
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